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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 496

M. E. HEISER,
Petitioner,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE WOODRUFF, LEONARD J. WOODRUFF, JR., IDA BELLE WOODRUFF, AND LEONARD J. WOODRUFF,
Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF RESPONSE

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WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITE WOODRUFF, LEONARD J. WOODRUFF, JR., IDA BELLE WOODRUFF, AND LEONARD J. WOODRUFF,
Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF RESPONSE

The respondents respectfully submit this response to petition for writ of certiorari and brief in support thereof.

I

RES JUDICATA

A

The Bankruptcy Court is a court of exclusive jurisdiction:

United States Fidelity & Guaranty Co. vs. *Bray*, 225 U. S. 205, 56 L. Ed. 1055;

Pepper vs. *Litton*, 308 U. S. 295, 84 L. Ed. 248;

Local Loan Co. vs. *Hunt*, 292 U. S. 234, 78 L. Ed. 1230;

Beneficial Loan Co. vs. *Noble* (10th Cir.), 129 Fed. 2d 425;

Hanssen vs. *Wengren* (10th Cir.), 121 Fed. 2d 1011.

It is essentially a court of equity and its proceedings inherently proceedings in equity. Authorities cited and *Prudence Realization Corporation* vs. *Geish*, 316 U. S. 89, 86 L. Ed. 1293.

The jurisdiction of Bankruptcy courts is exclusive of all other courts with respect to the allowance and disallowance of claims. Authorities cited.

This exclusive jurisdiction gives bankruptcy courts the power to inquire into the validity of any claim asserted against the estate and to disallow it if it is ascertained to be without lawful existence. *Lesser* vs. *Gray*, 236 U. S. 70, 59 L. Ed. 471; *Pepper* vs. *Litton*, supra.

Bankruptcy courts have exercised equitable powers in passing on a wide range of problems arising out of the administration of bankrupt estates. They have been invoked to the end that fraud will not prevail, substance will not give way to form, technical considerations will not prevent substantial justice from being done. These equitable considerations are exercised in the allowance or disallowance of claims. *Pepper* vs. *Litton*, *Beneficial Loan Co.* vs. *Noble*, supra.

The fact that debt or claim has been reduced to judg-

ment does not affect its character so far as provability in bankruptcy is concerned:

Boynton vs. *Ball*, 121 U. S. 457, 30 L. Ed. 985;

Pepper vs. *Litton*, supra;

In Re James A. Brady Foundry Co. (7th Cir.), 3 Fed. 2d 437;

In Re Continental Engine Co. (7th Cir.), 234 Fed. 58;

Butzel vs *Webster Apt. Co.* (6th Cir.), 112 Fed. 2d 362;

In Re Avery (6th Cir.), 114 Fed. 2d 768;

Chandler vs. *Thompson* (7th Cir.), 120 Fed. 940;

In Re Thompson (D. C.), 276 Fed. 313;

Local Loan Co. vs. *Hunt*, supra.

Petitioner's judgment was obtained by default. Service was obtained upon debtor by leaving summons with a member of debtor's family (R. 214). Debtor was away from home at the time and did not return until after his default had been entered. Judgment was entered on the testimony of petitioner (R. 350).

Judgment was entered March 20, 1939 (R. 10). 9 days later debtor served notice of his motion to vacate and tendered answer (R. 220-1). This was denied (R. 70).

In connection with this motion to vacate it is asserted on page 7 of petitioner's brief "Woodruff appeared and moved to vacate the judgment on the ground (among others) that it had been procured by perjury as to values of the gems". We call this Court's attention to the motion to vacate (R. 27) and submit that it contains no such allegations or grounds of relief.

It was stipulated that the District Court rendering the judgment should hear evidence as to the value of the property allegedly converted. This apparently upon the theory that no evidence of value had been previously heard. Upon hearing this evidence the Court let the judgment stand in the same amount as originally rendered (R. 275). In connection with this hearing it is asserted on pages 7 and 10 that "over 10 days of trial evidence was offered", "over 10 trial days". "After the 10 day hearing". The hearing referred to to determine values was held June 19, 22, 23, 27 and 28, 1939 (R. 680). Those who participated in the hearing know that only a portion of the Court time of each of these 5 days was occupied with this hearing.

We believe it pertinent that this hearing proceeded upon the theory that the petitioner was possessed of property of the kind and character he alleged was converted. The Court endeavored to determine the value of such property, assuming its existence and conversion. On the other hand, in the hearing before the Referee the respondents contended that the petitioner was never possessed of such property and that the allegations with respect to its possession were untrue.

In endeavoring to ascertain the source and character of the property possessed by petitioner, respondents developed that on August 9, 1928, he had shipped from San Francisco to Los Angeles "36 sacks mech corundum (ore)," weight 4325, value $500.00. (See bill of lading R. 1117).

On February 20, 1930, petitioner filed a claim in the matter of the Bankruptcy of the Golden State Gem of California at Los Angeles for the same material then valued at $30,250.00 (R. 649). The claim was denied (R. 1188). The claim disappeared (R. 1189, 1142). He testified in April, 1932, in support of this claim that he brought these gems with him from Australia in July, 1928 (R. 1048). The claim which had been filed by his brother-in-law under a power of attorney from the petitioner was incorrect and that he actually had 33,200 ounces of gems, then valued at $99,000.00 (R. 1070-71). Within thirty days after giving this testimony he sued Bankrupt in the California District Court, case 5587J (R. 1040-43). Therein he listed the same gems at 39,400 ounces, value $164,000.00. This suit was dismissed for want of prosecution. Respondents also developed petitioner's testimony given in case No. 238-348 in the Superior Court of San Francisco in 1935, (R. 1079), wherein he identified the same material as to quantity at 44,400 ounces, and also introduced in evidence the testimony of the petitioner given before the California District Court on the hearing to determine values when he identified the claimed gems at 39,400 ounces and value at $190,800.00 (R. 1123,25). All quantities and values were fixed as of the date of the alleged conversion.

The respondents also developed the fact that upon the hearing to determine values, petitioner testified that he had mined this material in Australia and loaned it to the

Australian Government for exhibition at the Panama Pacific Exposition at San Francisco in 1915; that the gems were shipped by the Australian Government to San Francisco and were there exhibited, petitioner being in charge of the exhibit for said Government. After the Exposition closed, petitioner stored the gems in the Wells Fargo Nevada Bank, safe deposit department, at San Francisco, where they remained from 1915 to 1928 when they were taken out and shipped to Los Angeles (R. 1129-33).

The petitioner repeated this evidence when his deposition was taken by the respondents in this case (R. 755-9).

Respondents proved by the depositions of the officials of the Australian Government in charge of its exhibition at the Exposition and of the records pertaining thereto that petitioner had no connection therewith so far as the Australian Government was concerned, did not loan any materials to that Government for exhibition at the Exposition (R. 957, 964, 976) and did not have any such materials on exhibition there. And from the official records of the Queensland Government (R. 965) that the total like gems exhibited by that Government at the Exposition did not exceed in quantity 150 ounces and value $5000.00, as contrasted with petitioner's various claims of from 32,000 ounces to 44,000, valued all the way from $500.00 to $190,800.00; also that such minerals were valued at $8.00 to $15.00 per ounce (R. 968-73) as contrasted with petitioner's fantastic values of $40.00, $50.00 and $60.00 an

ounce. It was proven by bank officials that he had no deposit in the Wells Fargo Nevada Bank at San Francisco from 1915 to 1928 or any other time (R. 669).

The respondents also proved up the letter shown at page 934-5 of the record written at a time when the petitioner claimed to have had the converted merchandise on hand and in storage in the San Francisco bank. They also proved that such material was a critical war material from 1914 to 1918; also that from 1915 to 1939 petitioner made frequent trips to Australia for the purpose of getting such merchandise to sell.

These are but a few of the pertinent facts developed by the respondents in support of their objections to petitioner's claim and which the Referee found sufficient in equity and justice to demand its disallowance. The entire record covers more than 800 pages of the printed transcript.

The Referee is the only court that has heard these facts. Only before the Referee were the issues of fraud, perjury and want of merit raised, urged and heard.

The disallowance of the claim by the Referee carries with it a presumption of correctness and sufficiency of evidence to sustain his findings:

In Re Farmers' Dairy Asso., 234 Fed. 118, 240 Fed. 121;

Chambers vs. *Continental Trust Co.*, 235 Fed. 441, 239 Fed. 1020;

McCullough vs. *Davenport Sav. Bank*, 226 Fed. 309.

Inherent in this presumption is the finding that appellee's claim is not founded upon a real debt and is without merit; that debtor was not indebted to him at the time judgment was rendered; that his purported cause of action for fraud and conversion was fictitious and that his judgment was obtained by fraud and upon perjured testimony. Shall a claim based upon such judgment be permitted to participate in the distribution of assets by a bankruptcy court?

Creditors are not seeking to vacate and set aside the judgment in the bankruptcy proceeding. Their attack is directed at appellee's claim. If his claim is disallowed the judgment still remains in force. Being based upon fraud and conversion, there may be some question as to whether it can be discharged in bankruptcy. The order of the Referee disallowed appellee's claim. It did not purport to disturb his judgment. The order of the District Court allows his claim—not his judgment.

Appellee's judgment is not protected by the Full Faith and Credit Clause of the Federal Constitution. *Baldwin* vs. *Iowa State Traveling Men's Association*, 283 U. S. 522, 75 L. Ed. 1244. Rules of State courts and decisions of State Appellate courts subversive of the general purpose of Bankruptcy Act are not controlling upon Federal Courts. *Local Loan Co.* vs. *Hunt*, 292 U. S. 234, 78 L. Ed. 1231.

It will therefore be seen that as respects the jurisdiction of the Bankruptcy court to inquire into the judgment underlying petitioner's claim the decision of the Circuit

Court is correct and in harmony with the cited cases from this Court, the Tenth and other Circuit Courts and the fundamental concepts of equity jurisprudence underlying the administration of the Bankruptcy Act.

B

THE PROCEEDINGS ON BEHALF OF THE TRUSTEE IN THE CALIFORNIA COURTS

But it is urged as ground for the writ that the proceedings by the trustee in the California Courts are res judicata of all matters urged by the respondents in their objections to the allowance of the claim. This could only be so if the objections urged to the claim by respondents were urged by the trustee, heard by the California courts and there decided upon their merits. *Russell* vs. *Place et al*, 94 U. S. 606, 24 L. Ed. 214.

See also:

De Sollar vs. *Hauscombe*,
158 U. S. 216, 39 L. Ed. 956;

Williams vs. *MacDonald et al*.
180 Cal. 546, 182 Pac. 29;

Molen vs. *Bussi et al* (Cal.), 5 Pac. 2d 450;

In Re Powers (7th Cir.), 115 Fed. 2d 69;

St. Louis Southwestern Ry. Co. vs. *Bolinger & Co.*
(5th Cir.), 17 Fed. 2d 924;

Aetna Life Ins. Co. vs. *Eaton*,
(2nd Cir.), 43 Fed. 2d 714;

Passailaigue vs. *Herron et al*
(5th Cir.), 38 Fed. 2d 775.

The proceedings on behalf of the trustee are shown at pages 285, 304, 656 and 987 to 1012 of the record. At pages 1014-16 are shown matters which were urged before the Ninth Circuit Court of Appeals by the trustee in his appeal from the judgment of the District Court.

The trustee's motion to vacate the California judgment and for leave to intervene, file an answer and be heard on the merits of the action was brought under Section 473 of the California Code of Civil Procedure and under Rule 60-B of the Federal Rules of Civil Procedure. Proceedings for relief under the California Statute and Rule 60-B do not bar a subsequent action to set aside the judgment:

Estudillo et al vs. *Security Loan & Trust Co. of So. Cal.*, 87 Pac. 19;
Antonsen vs. *Pacific Container Co.*, 120 Pac. 2d 148;
Resnick vs. *Parryzek*, 154 N. E. 350, 34 C. J. 387;
Hammond Lumber Co. vs. *Gilkey*, 7 Pac. 2d 724 (Cal.);
Nuckolls vs. *Bank of Cal.*, 74 Pac. 2d 264 (Cal.);
U. S. for use of Kantor vs. *Mutual Const. Co.*, 3 F. R. D. 227.

Even if such proceedings might be held to be in the nature of a final judgment binding upon the parties, the Court will look to the pleadings, proceedings and evidence in the case to determine what matters were urged, heard, tried and decided. For only as to such matters would the judgment be final and binding. 34 C. J. Section 1518 (b) page 1047.

The Referee was first of the opinion that the proceedings by the trustee in the California Court barred his right to hear the objections to the claim. But upon being shown the proceedings in the California Court on behalf of the trustee, which disclosed that the matters there urged by the trustee as grounds for the vacation of the judgment were matters appearing upon the face of the record and that the contentions that the bankrupt was not indebted to the petitioner in any amount, that the material allegations of the complaint were untrue, that the judgment was without merit, did not represent a real debt and was obtained through the use of perjured testimony given by the petitioner, were not raised by the trustee, the Referee reversed his decision and heard the case.

Order denying motion to vacate judgment will not support subsequent plea of res judicata:

34 *C. J.* 387,

Cohen vs. *Levy*, 49 App. Div. 638, 62 N. Y. S. 1060;

Blank vs. *Blank*, 13 N. E. 615;

Steele vs. *Bliss et al*, 170 Mich. 175, 135 N. W. 931;

Monroe vs. *Monroe*, 21 N. Y. S. 655;

Tobias vs. *Tobias*, 193 Ill. A. 95;

Estudillo et al vs. *Security Loan & Trust Co.*, 149 Cal. 556, 87 Pac. 19.

The proceedings by the trustee in the California Court did not bar the right of the Referee to hear the evidence in support of respondents' objections to petitioner's claim.

Pepper vs. *Litton*, supra, *In re James A. Foundry*, supra, *In re Powers*, supra, *Local Loan Company* vs. *Hunt*, supra, *Mercoid Corporation* vs. *Mid-Continent Investment Company*, 320 U. S. 660, 88 L. Ed. 376. The Circuit Court properly found that the matters upon which the Referee disallowed the claim were not in litigation in the proceedings in the California courts, were not there urged, heard nor decided.

We think we should call this Court's attention to these facts: on page 7 of the petitioner's brief appears the statement: "All creditors, (excepting Heiser) filed written petition alleging California judgment was obtained by fraud and perjury, asking Referee in Oklahoma to authorize and instruct trustee to go to California and attack the judgment." We submit that the application of the creditors appearing at page 20 of the record contains no such allegations and statements. At the bottom of the same page of petitioner's brief appears the statement that the trustee in his motion to vacate the judgment alleged fraud in the procurement of the judgment and perjury as to the values of the gems converted by Woodruff. Again we submit that these statements are not borne out by the record, as we have heretofore pointed out and as the Referee and Circuit Court found.

At page 8 of petitioner's brief appears the following statement:

"After the judgment so became final, the same

identical charges, in the same words and identical worded phrases were filed as objections to the allowance of the Heiser judgment as a filed claim before the Oklahoma Referee."

The objections of the creditors to the allowance of the claim and amendments thereto will be found at pages 41, 122 and 125 of the record. Compared with the motion of the trustee to vacate the judgment it will be found that they do not support this statement of the petitioner.

C

A. COURT OF EQUITY HAS JURISDICTION TO GRANT RELIEF AGAINST JUDGMENT OBTAINED BY WILFUL AND CORRUPT PERJURY

The respondents established that petitioner's judgment was obtained by wilful and corrupt perjury. The Bankruptcy Court is a court of equity and has jurisdiction to grant relief against such judgment by denying its enforcement or a claim based thereon:

U. S. vs. *Throckmorton*, 98 U. S. 61, 25 L. Ed. 93;

Marshall vs. *Holmes*, 141 U. S. 589, 35 L. Ed. 870;

Hazel-Atlas Glass Co. vs. *Hartford-Empire Co.*, 322 U. S. 237, 88 L. Ed. 1250;

Publicker vs. *Shallcross, et al*, 106 Fed. 2d 949 (3rd Cir.);

Munro vs. *Callahan*, 55 Neb. 75, 75 N. W. 151;

El Reno Mutual Fire Ins. Co. vs. *Sutton*, 41 Okla. 297, 137 Pac. 700;

McBride vs. *Corren*, 216 Pac. 104 (Okla.);
Vacuum Oil Co. vs. *Brett*, 294 Pac. 638 (Okla.);
Freese vs. *Hummel*, 37 Pac. 458 (Ore.);
Donovan vs. *Miller*, 88 Pac. 82 (Idaho);
Elkhorn Valley Bank vs. *Marley*, 85 N. W. 846 (Neb.);
Wirth vs. *Wiggand*, 122 N. W. 714 (Neb.);
Boring vs. *Ott*, 138 Wis. 260, 119 N. W. 865.

CONCLUSION

Pepper vs. *Litton*, supra, from this Court is, as we say in Oklahoma, on all fours with the case at bar. Upon it the Circuit Court relied. That Court remanded the case to the District Court for findings of fact and conclusions of law. Such procedure can hurt no one. If petitioner is entitled to have his claim allowed the District Court will allow it. If, as found by the Referee, the judgment underlying his claim does not represent a real debt, was obtained by fraud and wilful and corrupt perjury and is without merit he should not ask nor expect its allowance.

It is therefore respectfully submitted the writ should be denied because the decision of the Circuit Court herein is in harmony with established concepts of equity jurisprudence in the administration of the Bankruptcy Act; follows well settled and sound decisions of this Court, the

Tenth and other Circuit Courts and accords with right and justice as administered by our Federal Courts.

Respectfully,

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